

MEMORANDUM OF UNDERSTANDING
BETWEEN FEDERAL BUREAU OF INVESTIGATION AND U.S. ENVIRONMENTAL PROTECTION AGENCY
COUNTERINTELLIGENCE REFERRALS

I. **Parties**

The Federal Bureau of Investigation (FBI) is responsible for conducting counterintelligence within the United States and coordinating foreign counterintelligence with other members of the intelligence community to preserve national security interests. E.O. 12333, Parts 1.3(b)(20)(A) and 1.7(g) (2008). The U.S. Environmental Protection Agency (EPA), a federal executive agency, is charged with lawfully preparing, using, and sharing intelligence within the U.S. government to protect national security interests. E.O. 12333, Parts 1.1 and 1.5 (2008). EPA's Office of Homeland Security (OHS) is responsible for leadership and coordination of all national security intelligence, counterintelligence, and counterterrorism activities within the agency and serves as the principal EPA liaison to the U.S. intelligence community.

II. **Purpose**

FBI/Counterintelligence Division (CD) and EPA/OHS recognize that national security responsibilities are held within the traditional intelligence community (IC) as well as within executive branch agencies not traditionally associated with the IC. FBI and EPA aspire to set forth through this non-binding Memorandum of Understanding (MOU) the basic roles and responsibilities each party intends to undertake on matters of mutual interest. Specifically, pursuant to 50 U.S.C. 402a (e), Executive Order 12333 §1.1 (2008), FBI and EPA intend to fully cooperate to protect national security interests from foreign and insider threats. This MOU seeks, by this collaboration, to augment the individual capabilities of FBI and EPA to protect the security of our national interests.

III. **Authorities**

This MOU will be interpreted and implemented in accordance with applicable provisions of constitutional, statutory, and regulatory law, executive orders, presidential directives, Attorney General Guidelines, intelligence community directives (ICD), intelligence community policy guidance (ICPG), intelligence community policy memoranda (ICPM), and FBI or EPA internal orders and procedures. The enforcement of all criminal laws affecting, involving, or relating to the national security is under the jurisdiction of the FBI. The Attorney General has determined that all criminal cases directed against the security of our nation, as well as collateral offenses, must be supervised by the Assistant Attorney General of the National Security Division.

IV. **Scope**

This MOU's focus is to detect, counter, and prevent treason, espionage, and related activities; the loss or compromise of classified information, especially as it relates to EPA facilities, property, infrastructure, employees, information/data, research, operations, or subjects of regulation, enforcement, and compliance activities nationwide. Activities undertaken collaboratively will include counterintelligence, and national security inquiries, investigations, information-sharing, notice, referrals, and related activities.

This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not a party to this MOU, against FBI or EPA, their officers or employees, or any other person or entity. This MOU does not direct or apply to any person or entity outside FBI and EPA.

V. Definitions

"Intelligence," "Foreign Intelligence," "Counterintelligence," and "Intelligence related to national security" are defined as set forth in the National Security Act of 1947, as amended, 50 U.S.C. § 401a.

"EPA employee" is defined as an individual performing work on behalf of EPA or having access to EPA information or physical space, including, but not limited to, contract employees, grantees, special government employees, detailees or assignees from other agencies or organizations, student interns or clerks, career appointees, and political appointees.

"Foreign power" or "Agent of a foreign power" are defined as in the Foreign Intelligence Surveillance Act of 1978, as amended, 50 U.S.C. § 1801(a)-(b).

"Party" is defined as a signatory to this MOU and that party's successor(s), on behalf of all entities that the party heads, manages, supervises, or represents.

"Will" as used throughout this MOU is defined as "aspires to," "intends to," "resolves to," "plans to," or "expects to," in the sense of a statement of future intent that is aspirational in nature and non-binding on any party.

VI. Antideficiency Act

As required by the Antideficiency Act, 31 U.S.C. § § 1341, 1342 (2011), all statements of intention made by FBI and EPA in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU in and of itself obligates FBI or EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or to incur other financial obligations. Any transaction involving the transfer of funds between the parties to this MOU will be undertaken in accordance with applicable law, regulation, and procedures under separate written agreement.

VII. Interagency Assistance, Coordination, and Cooperation

A. General

Primary day-to-day coordination of this MOU will take place between FBI Headquarters and EPA Headquarters. As the activities stemming from this MOU increase, contacts will be developed between FBI and EPA in a given regional locality. To this end, in conjunction with FBI Headquarters, EPA/OHS will initiate and maintain relationships with appropriate FBI Field Offices that have counterintelligence responsibilities in areas where EPA regional offices are located.

B. EPA Assistance to FBI

EPA/OHS will fulfill its obligations under Section 811 of the 1995 Intelligence Authorization Act, as amended, 50 U.S.C. § 402a(e), by immediately notifying FBI of indications that classified information is being or may have been disclosed to a foreign power or agent of a foreign power. Such "811 referral" will be made in writing (unless exigencies require oral notice initially) by EPA/OHS to the FBI CD's CD-4 Front office. Once the FBI commences an investigation, by law, EPA may not conduct a polygraph examination, interrogate, or otherwise take any action that is likely to alert an employee who is the subject of a counterespionage referral under § 402a(e), without prior consultation with the FBI. EPA/OHS will further hold in abeyance any additional inquiry until FBI/CD makes a determination whether to open an investigation. If FBI opens an investigation, EPA will continue to hold in abeyance any further inquiry to avoid prejudicing any FBI investigation, prosecution, or other actions. If FBI declines to open an investigation or makes no decision within thirty (30) calendar days, EPA will contact FBI/CD to provide notice of and/or coordinate with FBI any further inquiry or investigation. EPA will also immediately inform FBI of any material changes that may warrant reconsideration of FBI's initial determination.

C. FBI Assistance to EPA

1. Upon a referral by EPA pursuant to Section VII. B1, above, FBI/CD will, as appropriate and feasible, coordinate with EPA/OHS on any further actions to be taken by EPA/OHS. FBI/CD will further, as appropriate and feasible, keep EPA/OHS informed of the status of FBI's investigation.
2. Upon receipt of an 811 referral, as described in section VII. B2., above, FBI will notify EPA/OHS in writing (unless exigencies require oral notice initially), generally within thirty (30) calendar days.
3. When feasible, FBI/CD will notify EPA/OHS of information deemed by FBI to have foreign intelligence or counterintelligence significance or interest. FBI will, as appropriate and feasible, coordinate with EPA/OHS on any further actions to be taken by EPA/OHS. Further, FBI will, as appropriate and feasible, keep EPA/OHS informed of the status of FBI's investigation, and will, as appropriate and feasible, notify EPA/OHS prior to the initiation of any electronic surveillance, pursuant to the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801 et seq., as amended, as it concerns EPA facilities, employees, or visitors.

D. Interagency Sharing/Cooperation

Requests by FBI for specialized equipment, technical assistance, briefings, analytical reports, personnel, or specialized training concerning matters within the scope of this MOU will be made to EPA/OHS for coordination and approval, as appropriate.

Requests by EPA for specialized equipment, technical assistance, briefings, analytical reports, personnel, or specialized training concerning matters within the scope of this MOU will be made to FBI/CD for coordination and approval, as appropriate.

VIII. Privacy

The Parties acknowledge that the information involved in this MOU may identify U.S. persons, whose information is protected by the Privacy Act of 1974 and/or Executive Order 12333 (or any successor executive order). All such information will be handled lawfully pursuant to the provisions thereof.

IX. Implementation/Modification/Termination

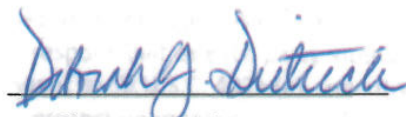
This MOU becomes effective upon signature of the parties below and will remain in effect for a period of five (5) years. This MOU may be extended or modified at any time with the mutual written consent of the parties. A party may in addition at any time terminate its participation in this MOU by providing sixty (60) days written notice to the other party.

For FBI:



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For EPA:



Debbie Y. Dietrich
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Date: 6.29.2012

Date: 7-11-2012